

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 319**

4 (By Senators Kessler (Acting President) and Unger)

5
6 _____
6 [Originating in the Committee on Health and Human Resources;
7 reported February 24, 2011.]
8 _____

9 A BILL to amend the Code of West Virginia, 1931, as amended, by
10 adding thereto a new article, designated §11-13BB-1, §11-13BB-
11 2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7,
12 §11-13BB-8 and §11-13BB-9, all relating to establishing a tax
13 credit for certain physicians who provide certain physician's
14 services at no charge to certain free health facilities in
15 West Virginia; setting forth findings; specifying definitions;
16 authorizing credit; specifying the amount of tax credit;
17 specifying how credit may be asserted; specifying no credit
18 carryovers; specifying forms and schedules to be established
19 by the Tax Commissioner; specifying ten thousand-dollar
20 maximum credit per taxpayer per tax year; disallowing
21 application of tax credit if the credit allowed under article
22 thirteen-j of said chapter is allowed for the same credit
23 base; providing for add back of deductions, adjustments or
24 modifications to taxable income if based upon the same
25 activity, in-kind service, donation or contribution for which
26 credit is taken; authorizing the Tax Commissioner to

promulgate rules; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7, §11-13BB-8 and §11-13BB-9, all to read as follows:

ARTICLE 13BB. TAX CREDIT FOR FREE MEDICAL SERVICES.

§11-13BB-1. Legislative finding and purpose.

The Legislature finds that physicians practicing in this state who provide their services at no charge in free health clinics are providing services in the public interest and promote the general welfare of the people of this state.

§11-13BB-2. Definitions.

(a) *General.* -- When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used.

(b) *Terms defined.* --

(1) "Eligible taxpayer" means any physician who provides not less than 300 hours per tax year of physician's services at no charge in one or more free health care facilities in this state.

(2) "Free health care facility" means a nonprofit, charitable, or eleemosynary health care facility qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1987, as amended, which voluntarily and without expectation

1 or receipt of payment or other compensation or financial benefit
2 provides health care services to persons who do not qualify for
3 Medicare or Medicaid, have no private health insurance, and cannot
4 afford to see a medical care professional.

5 (3) "Health care facility" means a facility defined as a
6 health care facility by section three, article thirty-C, chapter
7 sixteen of this Code.

8 (4) "Physician" means any allopathic or osteopathic doctor
9 licensed to practice medicine in this state.

10 (5) "Physicians' services" means and is limited to those
11 services furnished by a physician within the scope of the practice
12 of allopathic or osteopathic medicine, as defined by the laws of
13 this state.

14 **§11-13BB-3. Eligibility for tax credits; creation of the credit.**

15 Every eligible taxpayer is allowed a credit against the tax
16 payable under article twenty-one of this chapter. The amount of
17 this credit is determined and applied as provided in this article.

18 **§11-13BB-4. Amount of credit allowed.**

19 The amount of annual credit allowable under this article to an
20 eligible taxpayer shall be equal to ten thousand dollars.

21 **§11-13BB-5. Excess credit forfeited.**

22 After application of the credit against tax under this article
23 for the tax year, the amount of tax credit remaining and not used,
24 if any, is forfeited. Unused credit may not be carried back to any

1 prior tax year and shall not carry forward to any subsequent tax
2 year.

3 **§11-13BB-6. Application of credit; schedules; estimated taxes.**

4 (a) The credit allowed under this article is applied against
5 the tax payable by the eligible taxpayer under article twenty-one
6 of this chapter.

7 (b) To assert this credit against tax, the eligible taxpayer
8 shall prepare and file with its annual tax return filed under
9 article twenty-one of this chapter, such forms and schedules as the
10 Tax Commissioner may require.

11 (c) An eligible taxpayer may consider the amount of credit
12 allowed under this article when determining the eligible taxpayer's
13 liability under article twenty-one of this chapter for periodic
14 payments of estimated tax for the tax year, in accordance with the
15 procedures and requirements prescribed by the Tax Commissioner.

16 (d) Any charitable deduction, or other deduction, decreasing
17 adjustment or decreasing modification taken by any taxpayer in
18 determining federal taxable income which affects West Virginia
19 taxable income under article twenty-one of this chapter, or taken
20 by any taxpayer in determining West Virginia taxable income under
21 article twenty-one of this chapter for the taxable year, shall be
22 added to West Virginia taxable income in determining the tax
23 liability of the taxpayer under article twenty-one of this chapter,
24 before application of the credit allowed under this article for the
25 taxable year, if such deduction, adjustment of modification is the
26 result of, or is calculated or determined based on, physician's

1 services provided by the eligible taxpayer during the tax year at
2 no charge in one or more free health care facilities in this state,
3 for which credit is claimed under this article,.

4 (e) No credit is allowed under this article for any activity,
5 donation, contribution, or in kind service, for which the tax credit
6 authorized under article thirteen-J of this chapter has been
7 authorized, taken or allowed.

8 **§11-13BB-7. Legislative rules.**

9 The Tax Commissioner may propose for legislative approval
10 pursuant to the provisions of article three, chapter twenty-nine-a
11 of this code any rules that may be necessary to execute the
12 purposes of this article.

13 **§11-13BB-8. Construction of article; burden of proof.**

14 The provisions of this article shall be reasonably construed.
15 The burden of proof is on the person claiming the credit allowed by
16 this article to establish by clear and convincing evidence that the
17 person is entitled to the amount of credit asserted for the taxable
18 year.

19 **§11-13BB-9. Effective date.**

20 This article is effective for taxable years beginning after
21 December 31, 2011.

22

23

24